

AMENDED IN SENATE APRIL 1, 2008

SENATE BILL

No. 1343

Introduced by ~~Senator Battin~~ *Senators Battin and Romero*
(Principal coauthor: Assembly Member Cook)

February 20, 2008

An act to amend Section 868.5 of the Penal Code, relating to witness testimony.

LEGISLATIVE COUNSEL'S DIGEST

SB 1343, as amended, Battin. Witness testimony: support persons: elder abuse.

Existing law authorizes a prosecuting witness in specified cases to have up to 2 persons of his or her own choosing for support at the preliminary hearing and at trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness, as specified.

This bill would add specified crimes against elder or dependent adults *when the prosecuting witness is the elder or dependent adult* to the offenses for which a prosecuting witness may have up to 2 support persons while testifying. *The bill would make other related changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 868.5 of the Penal Code is amended to
2 read:
3 868.5. (a) Notwithstanding any other law, a prosecuting
4 witness in a case involving a violation of Section 187, 203, 205,
5 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d,

1 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, or 647.6,
2 former Section 277 or 647a, subdivision (1) of Section 314, or
3 subdivision (b), (d), or (e) of Section 368 *when the prosecuting*
4 *witness is the elder or dependent adult*, shall be entitled, for
5 support, to the attendance of up to two persons of his or her own
6 choosing, one of whom may be a witness, at the preliminary
7 hearing and at the trial, or at a juvenile court proceeding, during
8 the testimony of the prosecuting witness. Only one of those support
9 persons may accompany the witness to the witness stand, although
10 the other may remain in the courtroom during the witness'
11 testimony. The person or persons so chosen shall not be a person
12 described in Section 1070 of the Evidence Code unless the person
13 or persons are related to the prosecuting witness as a parent,
14 guardian, or sibling and do not make notes during the hearing or
15 proceeding.

16 (b) If the person or persons so chosen are also ~~prosecuting~~
17 witnesses, the prosecution shall present evidence that the person's
18 attendance is both desired by the prosecuting witness for support
19 and will be helpful to the prosecuting witness. Upon that showing,
20 the court shall grant the request unless information presented by
21 the defendant or noticed by the court establishes that the support
22 person's attendance during the testimony of the prosecuting witness
23 would pose a substantial risk of influencing or affecting the content
24 of that testimony. In the case of a juvenile court proceeding, the
25 judge shall inform the support person or persons that juvenile court
26 proceedings are confidential and may not be discussed with anyone
27 not in attendance at the proceedings. In all cases, the judge shall
28 admonish the support person or persons to not prompt, sway, or
29 influence the witness in any way. Nothing in this section shall
30 preclude a court from exercising its discretion to remove a person
31 from the courtroom whom it believes is prompting, swaying, or
32 influencing the witness.

33 (c) The testimony of the person or persons so chosen who are
34 also ~~prosecuting~~ witnesses shall be presented before the testimony
35 of the prosecuting witness. The prosecuting witness shall be
36 excluded from the courtroom during that testimony. Whenever the
37 evidence given by that person or those persons would be subject
38 to exclusion because it has been given before the corpus delicti
39 has been established, the evidence shall be admitted subject to the
40 court's or the defendant's motion to strike that evidence from the

- 1 record if the corpus delicti is not later established by the testimony
- 2 of the prosecuting witness.

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